

Assembly Bill No. 191

Passed the Assembly June 17, 2010

Chief Clerk of the Assembly

Passed the Senate June 21, 2010

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 16326 of the Government Code, and to amend Section 2103.1 of the Streets and Highways Code, relating to state cash resources, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 191, Committee on Budget. State cash resources.

(1) Existing law, until September 1, 2011, enacts a cash management plan to authorize the Controller, Treasurer, and Director of Finance to defer General Fund payments for the months of July and October of 2010 and March 2011 for up to 60, 90, and 60 days, respectively, for certain entities, including county offices of education, public schools, and charter schools, subject to certain conditions. Existing law limits the total outstanding amount of deferrals for these entities to \$2,500,000,000 at any given time. Existing law, under certain conditions, authorizes these entities to request a hardship waiver for the March 2011 deferral, and requires payments deferred in March 2011 for public schools in which kindergarten or grades 1 to 12, inclusive, are taught to be paid no later than April 29, 2011.

This bill would instead require all March 2011 deferred payments to county offices of education, school districts, and charter schools to be made no later than April 29, 2011. The bill would make other related changes.

(2) Existing law provides for the deferral of specified fuel tax apportionments from the Highway Users Tax Account to cities and counties, including a deferral of no more than \$50,000,000 each month on a pro rata basis for July, August, September, October, November, and December 2010 and January, February, and March 2011. The balance of unpaid apportionments for these months is required to be paid on or within 2 business days of April 28, 2011. However, a county with a population of less than 50,000 or a city within that county is exempt from these deferrals.

This bill would additionally authorize any city to request an exemption from all or a portion of these deferrals if the deferrals would create a hardship in making specified bond debt payments.

The bill would require a city requesting an exemption to submit specified documentation to the Director of Finance, who would have the sole discretion to approve or deny the exemption.

(3) Existing law requires that warrants for the principal apportionments from the State School Fund for school districts for the month of June instead be drawn in July of the same calendar year pursuant to a specified certification.

This bill, notwithstanding that provision, for the 2009–10 fiscal year only, would require that an amount up to \$800,000,000, to be calculated as specified, of warrants for the principal apportionments for the month of June 2010 be drawn in June 2010.

(4) This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 16326 of the Government Code is amended to read:

16326. (a) Notwithstanding any other law, except as otherwise specified in Sections 16325 and 16325.5, cash deferrals specified in Sections 16325 and 16325.5, and Section 2103.1 of the Streets and Highways Code, as amended by the act amending this section in the 2009–10 Regular Session, shall be limited, as follows:

(1) Payments to school districts, county offices of education, and charter schools shall be deferred as specified in Section 16325.5 with the total amount of the deferrals under this action limited to two billion five hundred million dollars (\$2,500,000,000) for each deferral, and a maximum of three deferrals during the fiscal year. The total outstanding amount of these deferrals, as described in Section 16325.5, shall not exceed two billion five hundred million dollars (\$2,500,000,000) at any given time. The Controller, Treasurer, and the Director of Finance shall determine and jointly provide a written declaration to the Legislature and to the State Department of Education, and the State Department of Education shall inform school districts, county offices of education, and charter schools of the amounts and timing of payment deferrals for the 2010–11 fiscal year. This declaration shall be provided no later than March 31, 2010. It is the intent of the Legislature that the advance principal apportionment payment due in July be

deferred first as a part of the July 2010 deferral as specified in Section 16325.5.

(A) Subject to the approval of the Director of Finance, in order for a county office of education to receive scheduled apportionments from the Controller if payments are deferred, as specified in Section 16325.5, the Superintendent of Public Instruction shall certify that the deferral of warrants will result in the county office of education being unable to meet its expenditure obligations for the time period during which warrants are deferred, and shall notify the Director of Finance of this fact on or before June 1, 2010. Subject to the approval of the Director of Finance, a county office of education that did not receive apportionments for July 2010 and October 2010, as specified in Section 16325.5, may seek a hardship waiver to receive scheduled apportionments from the Controller if payments are deferred in March 2011. To apply for a hardship waiver, the Superintendent of Public Instruction shall certify that the deferral of March 2011 warrants will result in the county office of education being unable to meet its expenditure obligations for the time period during which warrants are deferred, and shall notify the Director of Finance of this fact on or before January 5, 2011. The criteria, as applicable, set forth in statute and regulations to qualify a school district for an emergency apportionment shall be used to make the certifications specified in this subparagraph.

(B) Subject to the approval of the Director of Finance, in order for a charter school to receive scheduled apportionments from the Controller if payments are deferred, as specified in Section 16325.5, the chartering authority, in consultation with the county superintendent of schools, shall certify that the deferral of warrants will result in the charter school being unable to meet its expenditure obligations for the time period during which warrants are deferred, and shall notify the Superintendent of Public Instruction and the Director of Finance of this fact on or before June 1, 2010. Subject to the approval of the Director of Finance, a charter school that did not receive apportionments for July 2010 and October 2010, as specified in Section 16325.5, may seek a hardship waiver to receive scheduled apportionments from the Controller if payments are deferred in March 2011. To apply for a hardship waiver, the chartering authority, in consultation with the county superintendent of schools, shall certify that the deferral of March 2011 warrants

will result in the charter school being unable to meet its expenditure obligations for the time period during which warrants are deferred, and shall notify the Superintendent of Public Instruction and the Director of Finance on or before January 5, 2011. The criteria, as applicable, set forth in statute and regulations to qualify a school district for an emergency apportionment shall be used to make the certifications specified in this subparagraph.

(C) Subject to the approval of the Director of Finance, in order for a school district to receive scheduled apportionments from the Controller if payments are deferred, as specified in Section 16325.5, the county superintendent of schools shall certify to the Superintendent of Public Instruction and to the Director of Finance on or before June 1, 2010, that the deferral of warrants will result in the school district being unable to meet its expenditure obligations for the time period during which warrants are deferred. Subject to the approval of the Director of Finance, a school district that did not receive apportionments for July 2010 and October 2010, as specified in Section 16325.5, may seek a hardship waiver to receive scheduled apportionments from the Controller if payments are deferred in March 2011. To apply for a hardship waiver, the county superintendent of schools shall certify to the Superintendent of Public Instruction and to the Director of Finance on or before January 5, 2011, that the deferral of March 2011 warrants will result in the school district being unable to meet its expenditure obligations for the time period during which warrants are deferred. The criteria, as applicable, set forth in statute and regulations to qualify a school district for an emergency apportionment shall be used to make the certifications specified in this subparagraph.

(D) Notwithstanding Section 16325.5, payment of the March 2011 deferral to county offices of education, school districts, and charter schools shall be made no later than April 29, 2011.

(2) Of the amount appropriated from the General Fund to the University of California for the 2010–11 fiscal year, payments made by the state to the University of California shall not exceed one-twelfth of the annual appropriation for each month from July 2010 through April 2011. Any remaining appropriation balance may be paid to the University of California thereafter with no limitations.

(3) Notwithstanding Sections 84320, 84321, and 84321.5 of the Education Code and any other law that governs the regulations adopted by the Chancellor of the California Community Colleges to disburse funds, two hundred million dollars (\$200,000,000) and one hundred million dollars (\$100,000,000) from the payment of apportionments to districts pursuant to Sections 84320, 84321, and 84321.5 of the Education Code for July 2010 and March 2011, respectively, shall be deferred to October 2010 and May 2011, respectively. Notwithstanding this paragraph and subject to the approval of the Director of Finance, the Controller shall issue warrants pursuant to Sections 84320, 84321, and 84321.5 of the Education Code that include the full amount of the apportionment payments for the months of July 2010 or March 2011, or both, for a community college for which the Chancellor of the California Community Colleges determines, in consultation with the Director of Finance, on or before June 1, 2010, that the deferral of warrants pursuant to this paragraph will present an imminent threat to the fiscal integrity and security of the community college.

(4) Of the amount appropriated from the General Fund to the California State University for the 2010–11 fiscal year, payments made by the state to the California State University shall not exceed one-twelfth of the annual appropriation for each month from July 2010 through April 2011. Any remaining appropriation balance may be paid to the California State University thereafter with no limitations.

(5) The 2010–11 cash management plan described in Sections 16325 and 16325.5 may include deferrals in state payments for specific programs that are disbursed to cities, counties, and other public entities not addressed elsewhere in this section. Deferral of payments by the state to cities, counties, and other public entities not addressed elsewhere in this section shall be as follows:

(A) Payments shall be deferred as specified in Section 16325.5 per the specific program.

(B) Payments shall be limited to one billion dollars (\$1,000,000,000) for all programs that affect cities, counties, and other public entities not addressed elsewhere in this section at any given point in time.

(C) A maximum of three deferrals per specific program may be made during the fiscal year.

(D) The state shall not defer any payments to a county with a population less than 50,000, or a city within a county with a population less than 50,000.

(E) Payments to local governments may be deferred for social services programs, transportation programs, and Mental Health Services Act (Proposition 63 of 2004) programs.

(6) In addition to implementing the payment schedule described in paragraph (4), the Director of Finance may at any time during the 2010–11 fiscal year defer payment of General Fund moneys, in a cumulative amount not to exceed two hundred fifty million dollars (\$250,000,000), appropriated to the California State University. Payment of the amount deferred shall be made in the final week of April 2011.

(b) Limits on payment deferrals specified in subparagraphs (A) and (C) of paragraph (5) of subdivision (a) shall not apply to payments authorized in paragraph (3) of subdivision (a) of Section 2103.1 of the Streets and Highways Code to cities and counties. Limits on payment deferrals specified in subparagraphs (A) and (C) of paragraph (5) of subdivision (a) shall not apply to payments to the Mental Health Services Act (Proposition 63) programs.

(c) Upon the Controller's receipt of a letter from the executive officer of the Administrative Office of the Courts, or any other executive officer representing cities or counties, the state may defer payments to the entity or entities that the executive officer represents as specified in the letter even if the specified amounts exceed the deferrals authorized in this section or elsewhere in law.

(d) This section shall become inoperative on September 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 2103.1 of the Streets and Highways Code is amended to read:

2103.1. (a) Notwithstanding any other law, the apportionment of revenues deposited to the credit of the Highway Users Tax Account in the Transportation Tax Fund that are otherwise required to be made, pursuant to this chapter, to cities, counties, and cities and counties for the following months shall be deferred and shall be made as follows:

(1) For the months of July and August of 2009, the apportionments shall be paid with the payment of August revenues in September 2009. This deferral shall not apply to a county with a population of less than 40,000.

(2) For the months of November and December of 2009, and January, February, and March of 2010, the apportionments shall be paid on or within two business days of April 28, 2010. This deferral shall not apply to a county with a population of less than 40,000.

(3) (A) For the months of July, August, September, October, November, and December 2010, and January, February, and March 2011, no more than fifty million dollars (\$50,000,000) for each month shall be deferred on a pro rata basis, as determined by the Controller, from all allocations to cities, counties, and cities and counties from the Highway Users Tax Account. The balance of unpaid apportionments for these months shall be paid on or within two business days of April 28, 2011. The state shall not defer any payments to a county with a population less than 50,000, or a city within a county with a population less than 50,000.

(B) A city may request an exemption from all or a portion of the deferral in subparagraph (A) if the deferral will create a hardship in making required bond debt payments. The request must be received not less than 30 days prior to the date of the monthly payment that is the subject of the city's request and that otherwise is subject to deferral. The Director of Finance shall determine if the exemption is necessary, and the exemption shall be approved or denied at his or her sole discretion.

(C) A city requesting an exemption pursuant to subparagraph (B) shall provide all of the following documentation:

(i) Month-by-month expected payments from the Highway Users Tax Account.

(ii) The timing and amount of the required bond payments.

(iii) Evidence that the deferral of payments from the Highway Users Tax Account will result in the inability of the city to meet bond payments specified in clause (ii).

(b) For the purpose of meeting the cash obligations associated with ongoing budgeted costs, a city, county, or city and county may borrow from its account that is designated for the receipt of state funds allocated for local streets and roads or the county road fund, including that resulting from the receipt of funds pursuant

to the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 (Chapter 12.49 (commencing with Section 8879.20) of Division 1 of Title 2 of the Government Code) and apply the proceeds of the borrowing to local street and road maintenance and operations, during the period of the deferrals of apportionment payments pursuant to subdivision (a). Any borrowing from funds that is disbursed by the Controller's office on or after March 1, 2010, shall be repaid with interest, computed at the current average rate of interest earned by the local agency with respect to amounts on deposit in the account from which the borrowing occurs, as determined by the local agency, within the fiscal year in which the borrowing initially occurs. Interest that is repaid on amounts borrowed pursuant to this subdivision shall be applied by the local agency for the purposes set forth in the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006. The use of this cash shall not be considered as an expenditure of bond act funds if the cash is replaced when the payments in subdivision (a) are made.

(c) Notwithstanding any other provision of law, for the purpose of meeting the cash obligations associated with ongoing street and road costs, a city, county, or city and county may make use of any cash balance available to a special fund of the city, county, or city and county during the period of deferral of apportionment payments pursuant to subdivision (a).

(d) This section shall not affect any requirement that an expenditure is required to be accrued and reflected from the appropriate funding source for which the money was received and that an expenditure is required to meet all the requirements of its funding source.

SEC. 3. Notwithstanding subdivision (a) of Section 14041.5 of the Education Code, for the 2009–10 fiscal year only, an amount up to eight hundred million dollars (\$800,000,000) of warrants for the principal apportionments for the month of June 2010 shall be drawn in June 2010. The amount of the warrants drawn in June pursuant to this section shall not exceed the amount of the principal apportionments for the month of June less the amount of one billion one hundred one million six hundred fifty-five thousand dollars (\$1,101,655,000) that, pursuant to subdivision (e) of Section 14041.5 of the Education Code, is deemed "General Fund revenues appropriated for school districts," as defined in subdivision (c) of

Section 41202 of the Education Code, and included within the “total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B,” as defined in subdivision (e) of Section 41202 of the Education Code, for the 2010–11 fiscal year.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide hardship relief to certain public entities from the deferred payment of state funds to those agencies, it is necessary that this act take effect immediately.

Approved _____, 2010

Governor